

ORIGINAL

PRESIDING OFFICER'S
RULING NO. MC98-1/11

Nov 3 3 17 PM '98

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Mailing Online Service

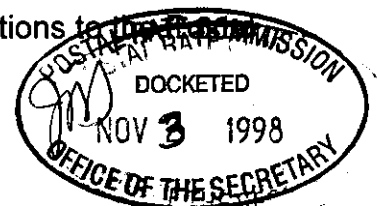
Docket No. MC98-1

PRESIDING OFFICER'S RULING GRANTING MOTIONS OF
UNITED STATES POSTAL SERVICE FOR PROTECTIVE CONDITIONS

(November 3, 1998)

On October 28, 1998, the Postal Service filed two motions for protective conditions. The Motion of United States Postal Service for Protective Conditions for Response to Presiding Officer's Information Request No. 2, Question 4 requests that its marketing plan for PostOffice Online be disclosed under protective conditions. According to the Postal Service, its marketing plan analyzes the market attributes of PostOffice Online and other firms' Web offerings, sets out targeted media types and costs, identifies the objectives and budget of the plan, and attempts to measure its effectiveness. The Postal Service argues that this information has commercial value to potential competitors of PostOffice Online as well as to firms that offer Web-based services. It argues that Pitney Bowes would find this information particularly useful to its attempts to "improve" its DirectNET service. It requests that the same protective conditions approved in Presiding Officer's Ruling R97-1/52 in Docket No. R97-1 be applied to its PostOffice Online marketing plan. Motion at 1-2.

The ruling cited by the Postal Service precluded persons who make marketing and advertising decisions for potential competitors of the Postal Service from access to the Postal Service's marketing and advertising analyses and strategies. Because PostOffice Online has an array of potential competitors, some of whom are participants in this docket, it is appropriate to apply the same protective conditions to the Postal Service's marketing and advertising analyses and strategies.



Service's PostOffice Online marketing plan. Those protective conditions are set forth in Attachment A to this ruling.

Also, on October 28, 1998, the Postal Service filed its Motion of United States Postal Service for Protective Conditions for Response to OCA/USPS-T5-33. This motion asks that the protective conditions specified in Presiding Officer's Ruling R97-1/52 be applied to its response to OCA/USPS-T5-33 in this docket. It argues that protective conditions are necessary because its response contains proprietary software that calculates postage payments. It notes that the OCA does not object to the requested protective conditions.

The protective conditions that the Postal Service requests are appropriate procedures for protecting such proprietary software. They will be applied to the Postal Service's response to OCA/USPS-T5-33. They are set forth in Attachment B to this ruling.

RULING

1. The Motion of United States Postal Service for Protective Conditions for Response to Presiding Officer's Information Request No. 2, Question 4, filed October 28, 1998, is granted.

2. The Motion of the United States Postal Service for Protective Conditions for Response to OCA/USPS-T5-33, filed October 28, 1998, is granted.

A handwritten signature in black ink, appearing to read 'W.H. LeBlanc III', with a stylized flourish at the end.

W.H. "Trey" LeBlanc III
Presiding Officer

**STATEMENT OF COMPLIANCE
WITH PROTECTIVE CONDITIONS**

The following protective conditions limit access to materials provided in Docket No. MC98-1 by the Postal Service in response to Presiding Officer's Information Request No. 2, Question 4, and filed as Library Reference USPS-LR-16/MC98-1 (hereinafter, "these materials"). Individuals seeking to obtain access to that library reference must agree to comply with these conditions, and complete the attached certifications.

1. Only a person who is either:
 - (a) an employee of the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
 - (b) a participant in Postal Rate Commission Docket No. MC98-1; or a person employed by such a participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. MC98-1; shall be granted access to these materials. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. The final date of any participant's access shall be
 - (a) the date on which the Postal Rate Commission closes the evidentiary record in Docket No. MC98-1; or
 - (b) the date on which that participant formally withdraws from Docket No. MC98-1; or
 - (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. MC98-1 participant on whose behalf that person obtains access, whichever comes first. The

participant immediately shall notify the Postal Rate Commission and United States Postal Service counsel in Docket No. MC98-1 of the termination of any such business and consulting arrangement or retainer or affiliation that occurs before the closing of the evidentiary record.

4. Immediately after the Commission issues its recommended decision in Docket No. MC98-1, a participant (and any person working on behalf of that participant) who has obtained a copy of these materials shall certify to the Commission:
 - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
5. The duties of any persons obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
6. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially-sensitive, and privileged information.
7. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in Docket No. MC98-1.
8. The duty of nondisclosure of anyone obtaining access to these materials is continuing, terminable only by specific order of the Commission.
9. Any Docket No. MC98-1 participant or other person seeking access to these materials by requesting access, consents to these or such other conditions as the Commission may approve.

CERTIFICATION

The undersigned represents that:

Access to materials provided in Docket No. MC98-1 by the Postal Service in response to Presiding Officer's Information Request No. 2, Question 4, and filed as Library Reference USPS-LR-16/MC98-1 (hereinafter, "these materials" or "the information") has been authorized by the Commission.

The copy obtained is marked on every page with my name.

I agree to use the information only for purposes of analyzing matters at issue in Docket No. MC98-1.

I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence these materials in accordance with all of the protective conditions set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

**CERTIFICATION UPON RETURN OF
PROTECTED MATERIALS**

The Postal Service provided information in Docket No. MC98-1 in response to Presiding Officer's Information Request No. 2, Question 4, which it filed as Library Reference USPS-LR-16/MC98-1 (hereinafter, "these materials" or "the information"). When I obtained this information, I certified to the Commission that I was eligible to receive it. I now affirm as follows:

1. I have remained eligible to receive access to materials under paragraph 1 of the protective conditions throughout the period those materials have been in my possession. Further, I have complied with all conditions, and have maintained these materials in strict confidence in accordance with all of the protective conditions set out above.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. MC98-1.
3. I have returned the information to the Postal Rate Commission.
4. I have either surrendered to the Postal Rate Commission or destroyed all copies of the information that I obtained or that have been made from that information.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

STATEMENT OF COMPLIANCE
WITH PROTECTIVE CONDITIONS

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1. Only a person who is either:
 - (a) an employee of the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
 - (b) a participant in Postal Rate Commission Docket No. MC98-1; or a person employed by such a participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. MC98-1; shall be granted access to these materials. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals.
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 - (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. MC98-1 participant on whose behalf that person obtains access, whichever comes first. The participant immediately shall notify the Postal Rate Commission and United States Postal Service counsel in Docket No. MC98-1 of the

termination of any such business and consulting arrangement or retainer or affiliation that occurs before the closing of the evidentiary record.

4. Immediately after the Commission issues its recommended decision in Docket No. MC98-1, a participant (and any person working on behalf of that participant) who has obtained a copy of these materials shall certify to the Commission:
 - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
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6. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially-sensitive, and privileged information.
7. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in Docket No. MC98-1.
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